(1)

Supreme Court, U.S.
FILED

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No. _____

OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1995

Zofia Sobocinski - PETITIONER

VS.

Office of Personnel Management, et al - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for Federal Circuit

PETITION FOR WRIT OF CERTIORARI:

Zofia Sobocinski
920 Pennsylvania Ave
Schenectady, NY. 12303
(518)-372-6468

42 pp

Copy # 24/40

QUESTION PRESENTED

1. **Issue to be decided:**

Review and **reverse** the United States Court of Appeals **judgment** dated March 11,1996 and the decision of the Merit Systems Protection Board (Board), Docket No. NY-0831-95-0240-|-1, affirming an Office of Personnel Management (OPM) reconsideration decision denying my application for payment for the widow of civil service retiree survivor annuity benefits **and grant me the annuity benefits I am entitled to as the widow of the civil service employee.**

LIST OF PARTIES:

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Zofia Sobocinski - Petitioner.

2. Office of Personnel Management - Respondent.

3. Merit System Protection Board - Respondent.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For case from **federal courts:**

1. The opinion of the United States Court of Appeals appears at Appendix A (2 pages) to the petition. It is a public record but I do not know where it appears.

2. The decision of the Merit System Protection Board dated September 8, 1995 appears at the Appendix B to this petition (2 pages).

3. The decision of Administrative Judge dated May 25, 1995 appears at the Appendix C to this petition (6 pages).

4. The decision of Office of Personnel Management dated April 29, 1994 appears at the Appendix D to this petition (3 pages).

JURISDICTION

[X] For cases from **federal courts:**
The date at which the United States Court of Appeals decided my case was March 11, 1996. (the jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

1. Introduction.

I, Zofia Sobocinski (widow of the civil service retiree John Joseph Sobocinski), petition the Supreme Court of the United States to grant me the annuity survivor benefits after my late husband by **reversing the decision of the Office of Personnel Management dated April 29, 1994 denying me the benefits my husband asked for** and to review and reverse the decision of the Administrative Judge Joseph Hallock dated May 25, 1995 denying me the survivor's annuity benefits as well as the MSPB decision to ignore my petition (practically MCPB did not review the case) and the decision of the United States Court of Appeals for the Federal Circuit affirming the above decisions. I feel, that the Administrative Judge Joseph A. Hallock's decision dated May 25, 1995 is harmful and unjustified, based on his arbitrary opinion without taking into consideration all the facts and applicable laws. Please review everything, all facts once more and reverse the decision denying me the survivor's annuity benefits. I feel hurt and harmed even more because the Board did not review my objections to the judge's initial decision and did not explain in normal language why they deny to review, did not take stand to my objections even if I provided support to my statement.

2. Undisputed facts and statements:

2.1. John Sobocinski (my husband) retired under CSRS on January 1, 1975 and was not married then.

2.2. We both lived together for many years and finally we were married on Jan.6, 1989.

2.3. After the marriage took place, John notified OPM that he got married, named me HIS BENEFICIARY (Appendix E) and after receiving the letter from OPM (Appendix F) informing him about the possibility for annuity benefits, he asked OPM for the survivor annuity benefits for me (Attachment G).

3. Arguments supporting my petition.

3.1. THE JUDGE HALLOCK'S STATEMENTS AND MY OBJECTIONS:

3.1.1. From the judge's decision (page C3, Appendix C)....."*in order for the appellant to receive a survivor annuity as a result of death of her husband, he must have irrevocably elected such an annuity, in a signed writing received in the OPM within two years of their marriage.....**the writing need not have taken any particular form, so long it clearly indicated that it was his intention....*** " [5 U.S.C. § 8339(k)(2)(A)].

MY RESPONSE:

* My husband did that in his writing to OPM dated 02/19/90 (Appendix G). My husband responded to OPM on Feb.19,1990 stating exactly what the OPM asked for (see: Appendix F). He submitted our marriage certificate, provided his full name, date of birth and wrote "possibly a change in my annuity benefits for my wife". OPM notified my husband that he "might be entitled" to provide his wife with the annuity so he responded ..."possibly change in my annuity benefits for my wife". **OPM did recognize this writing as the request for annuity benefits** in their letter to me dated November 15, 1994, [see: Appedix H] but denied benefits, claiming my husband did not send the additional form. It is true, my husband did not send the additional form due to the fact

that he had to go to hospital (as a proof see: Attachment I, 6 pages), where in the applicable time he had four operations and wasn't able to do it. **But!!!** According to the applicable law [5 U.S.C.A. §8339(j)]- no additional forms are required (Appendix J).

....."Letter from a retiree informing Office of Personnel Management that he had remarried constituted a signed writing sufficient to be deemed an election of surviving benefits, since although retiree did not specifically state that he was electing survivor benefits, letter clearly indicated that such was his intention; moreover, considering such indication, 2 retiree's failure to receive and return proper election form could not detrimentally affect his widow. Lemp v. Office of Personnel Management, MSPB 1985.26 M.s.P.r.549."

That's why the decision denying me the survivor annuity benefits is harmful and unjustified.

* If the main issue in this case is to proof the possible "**intention**"..... The Judge's decision is based on his interpretation of the word "possibly". It means exactly "**IF POSSIBLE - CHANGE....**" What else could it mean? Why would he write to OPM at all? It clearly indicates, that if it is "possible" he wants the annuity survivor benefits for his wife. If he did not have the **intention he wouldn't bother to write to OPM at all.!!!** All above clearly indicates that such was his intention and this is enough for the spouse to receive the benefits.

*** Additionally as a proof of his intentions:**
He named me his BENEFICIARY [Appendix E] which for every lay person naming the wife the beneficiary is means the same as asking for all the benefits for his wife AND THIS PROOFS, THAT THIS WAS HIS INTENTION TO PROVIDE HIS WIFE WITH THE ANNUITY AND ALL OTHER BENEFITS SHE MIGHT BE ENTITLED TO.

* Besides, the Judge's interpretation has to be based on: **§1201.56(C)(2) ".....the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find a contested fact is more likely to be true than untrue".**
The evidence here is clear that my husband's intentions were to provide his wife with the benefits. Knowing, that the husband writes the letter to OPM asking for annuity benefits for his wife and knowing that he filled special form naming his wife his beneficiary would a reasonable person, considering the record as a whole, accept as sufficient to find that a contested fact is more likely to be true that untrue.! I AM SURE, THAT FOR ANY REASONABLE PERSON, THE FACT ALONE THAT MY HUSBAND NAMED ME HIS BENEFICIARY WITH OPM, CLEARLY INDICATES THAT HIS INTENTION WAS TO PROVIDE ME WITH SURVIVOR ANNUITY BENEFITS. Naming his wife his beneficiary, asking for "possible" a change in my annuity survivor benefits for my wife is viewed by **any reasonable person** as the proper and final step for providing his wife with the annuity. **That's why I should be granted the benefits.**

3.1.2. From the judge's statement....."*I, therefore, find it significant that the annuitant failed to return the Form RI 20-63 which OPM sent to him after receiving his writing .....the appellant contends that this may have due to illness, but the record does not show that her husband was so incapacitated due to illness that he was unable to return the form to OPM .....* "

OBJECTIONS:
* no records of my husband's illness were provided before, because I didn't think it was necessary at that time (I am a poor widow, not the lawyer) and the Judge did not ask me to support my statement, (did the Judge think that I was lying????)....why didn't he ask me to support my

statement in writing instead of accusing me for lying????) I included them (the records of illness) with my petition for review with MSPB and here as Appendix I.
The time period specified above in the judge's initial decision my late husband SPENT ALMOST ENTIRELY at the hospital, where he had four operations and was fighting for his life. At that time he was in pain, was placed in a special electric bed laying most of the time on his stomach, unable to move by himself.

* Besides that, it was not a time to think about additional confusing forms to OPM, having asked for survivor annuity once and having signed the Designation of Beneficiary form before. He had four operations at St.Clare's hospital in Schenectady, new York on July 16, August 15, August 31 and October 12, 1990. Does anybody in his state of health would think about additional writings to OPM.???? He filed proper form IN HIS OPINION naming me his beneficiary and that in the eyes of an ordinary citizen was sufficient. I believe that's why due to the illness he did not return the additional forms to OPM. Besides - it was not the prerogative for entitlement to my annuity.

"Choice of deposit payment scheme has no bearing upon whether valid election survivor annuity benefits was made; selection of deposit payment scheme and election of survivor annuity benefits are independent choices. Harris v. Office of Personnel Management, C.A.Fed.1993,985F.2d.549."

4. Arguments against the United States Court of Appeals decision dated March 11,1996 affirming the MSPB decision denying me survivor annuity benefits.

The "Discussion" on page 2 [Appendix A] on the United States Court of Appeals for the Federal Circuit dated March 11, 1996 is baseless and erroneous.

....."Ms. Sobocinski has not met her burden of proving that the Board's decision to affirm OPM's decision denying her application for a survivor annuity was arbitrary, capricious an abuse of discretion, unsupported by substantial evidence or otherwise not in accordance with law."

This statement is NOT TRUE.!!! On the pages above, I proved that the decision was arbitrary, I proved that the decision was an abuse of discretion and I proved that the decision was not in accordance with the law and that is the reason that I should be granted the survivor annuity benefits after my husband who was the civil service employee.

REASONS FOR GRANTING THE PETITION

1. The United States Court of Appeals for the Federal Circuit has entered the decision in conflict with the decision of another United States court of appeals on the same important matter:
Lemp v. Office of Personnel Management, MSPB 1985.26 M.s.P.r.549. ***....."Letter from a retiree informing Office of Personnel Management that he had remarried constituted a signed writing sufficient to be deemed an election of surviving benefits, since although retiree did not specifically state that he was electing survivor benefits, letter clearly indicated that such was his intention; moreover, considering such indication, retiree's failure to receive and return proper election form could not detrimentally affect his widow.***

2. The **decision of the lower court** stating "Mr. Sobocinski did not complete the application.....There is substantial evidence in the record to support this decision" **is erroneous.** It is true that he did not return the form but it was not necessary.
....."retiree's failure to receive and return proper election form could not detrimentally affect his widow.
Lemp v. Office of Personnel Management, MSPB 1985.26 M.s.P.r.549.

3. It is of the national importance of having the Supreme Court decide the questions involved, since the importance of the case is not only to me but to many others similarly situated. The Office of Personnel Management is issuing to its retirees confusing forms and many people misunderstand/misinterpret the Beneficiary Form with form RI 20-65. Also instead stating clearly the question e.g. "you are entitled" to which the answer can be only "yes or no", they ask "you might be entitled..." and to so asked question the answer can only be "if possible". Then the OPM claims that the election was not "clear" because it didn't specify yes or no.

To so asked question there is impossible to say yes or no.
It is probably a trick used by OPM to deprive spouses of hard working Americans of the basic benefits. **Anybody who fills out the Beneficiary Form would be under impression that he/she has completed everything required to provide the spouse with the annuity benefits and the OPM has to change this practice**. Otherwise many people are left with no pension and with no sources for living.

3. To protect the spouses of hard working Americans this OPM practice has to change.

4. Please, review again all the facts, interpretations.
Your reconsideration of the decision is greatly appreciated. I, the widow of the civil service employee lost my husband and now I don't even have Social Security of my own since I never worked outside of the household taking care of my ill husband.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Zofia Sobocinski
(Zofia Sobocinski)

Date: July 24, 1996

Appendix A.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

96-3007

ZOFIA SOBOCINSKI,
Petitioner,
v.
OFFICE OF PERSONNEL MANAGEMENT,
Respondent.

DECIDED: March 11, 1996

Before PLAGER, RADER, and SCHALL, *Circuit Judges*.
PER CURIAM.

Zofia Sobocinski seeks review of a decision of the Merit Systems Protection Board (Board), Docket No. NY-0831-95-0240-I-1, affirming an Office of Personnel Management (OPM) reconsideration decision denying her application for payment of a survivor annuity. We ***affirm***.

DISCUSSION

John Sobocinski retired under the Civil Service Retirement System on January 1, 1975. Mr. Sobocinski and petitioner were married on January 6, 1989. Mr. Sobocinski died on December 4, 1993. In an April 29, 1994 initial decision, OPM denied Ms. Sobocinski's request for a survivor annuity, and this decision was affirmed by OPM in a November 15, 1994 reconsideration decision. Ms. Sobocinski appealed OPM's decision to the Board. In an initial decision dated May 25, 1995, the administarative judge affirmed OPM's decision. The administrative judge found that OPM provided Mr. Sobocinski with an application form for a

reduced annuity with survivor benefits and that Mr. Sobocinski did not complete the application or otherwise make a clear, irrevocable, written election of survivor benefits. There is substantial evidence in the record to support this decision. Ms. Sobocinski has not met her burden of proving that the Board's decision to affirm OPM's decision denying her application for a survivor annuity was arbitrary, capricious, an abuse of discretion, procedurally incorrect, unsupported by substantial evidence, or otherwise not in accordance with law. See 5 U.S.C.§ 7703(c) (1994).

COSTS

Each party to bear its own costs.

Appendix B.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

Zofia Sobocinski,
Appellant,
v.
OFFICE OF PERSONNEL MANAGEMENT,
Agency.
CSF 2 141 260

DOCKET NUMBER
NY-0831-95-0240-I-1

DATE: Sep. 8,1995

Zofia Sobocinski, Schenectady, New York, pro se.
John G. Pearson, Washington, D.C., for the agency.

BEFORE
Ben L. Erdreich, Chairman
Beth S. Slavet, Vice Chair
Antonio C. Amador, Member

ORDER

After full consideration, we DENY the appellant's petition for review of the initial decision issued on May 25, 1995, because it does not meet the criteria for review set forth at 5 C.F.R. §1201.115. This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. §1201.113(b).

NOTICE TO THE APPELLANT REGARDING FURTHER REVIEW RIGHTS.

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. §7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, DC, 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. §7703(b)(1).

FOR THE BOARD:

Robert E. Taylor
Clerk of the Board

Washington, D.C.

Appendix C

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
NEW YORK FIELD OFFICE

ZOFIA SOBOCINSKI,
Appellant,
v.
OFFICE OF PERSONNEL MANAGEMENT,
Agency.
(CSF 2 141 260)

DOCKET NUMBER
NY-0831-95-0240-I-1

DATE: Sep. 8,1995

Cezary Drzymalski, Schenectady, New York, for the appellant.
John G. Pearson, Washington, D.C., for the agency.

BEFORE
Joseph A. Hallock
Administrative Judge

INITIAL DECISION

INTRODUCTION

The appellant filed a timely appeal from an Office of Personnel Management (OPM) reconsideration decision denying her application for survivor annuity benefits under the Civil Service Retirement System (CSRS) as the surviving spouse of John J. Sobocinski (annuitant). The Merit Systems Protection Board (Board) has jurisdiction over this appeal pursuant to 5 U.S.C. § 8347(d)(1) and 5 C.F.R. § 831.110. The appellant initially requested, but later waived, her right to a hearing. *See* Appeal File (AF), Tabs 6 (audio tape) and 7. For the reasons set forth below, OPM's reconsideration decision is AFFIRMED.

ANALYSIS AND FINDINGS

Burden of proof

One who asserts an entitlement to a retirement benefit bears the burden of proving by preponderant evidence that she meets the applicable criteria for such entitlement. *See* 5 C.F.R. § 1201.56(a)(2); *Fox v. Office of Personnel Management*, 50 M.S.P.R. 602, 605 (1991).

Undisputed facts

The record shows that the following facts are not in dispute. The annuitant retired under the CSRS on January 1, 1975. *See* AF, Tab 5. He was not married at the time of his retirement. *Id.* He and the appellant were married on January 6, 1989. *Id.* On February 12, 1990, OPM wrote to him as follows:

> It has been noted that you have married since the date of your Civil Service Retirement. In order to update our records, please provide our office with copy of your marriage certificate. Since you may also be entitled to elect a reduced annuity with survivor benefits to your spouse, you should indicate whether or not you wish to make such an election. We will the review your file and advise you of any change or elections that you are entitled to make. Please be sure the date of marriage is clearly posted on the document you furnish to our office. It is also important that you post your full name, date of birth and CSA claim number to enable our office to readily identify your claim.

Id.

He responded to OPM on February 19, 1990 as follows:

> The following is the information you requested in your letter of Feb-12-1990:
>
> John Joseph Sobocinski
> Date of Birth: Sept-11-1910
> CSA Number-A1763872
> Marriage Certificate, and possibly a change in my annuity survivor benefits for my wife.

Id.

On April 16,1990, OPM sent him Form RI 20-65 which contained information to assist a retiree who retired after May 6, 1985, or who married after February 26, 1986, in deciding whether to provide a civil service survivor annuity for a current spouse. *See* AF, Tabs 5 and 8. The form was completed by OPM to show the change in the annuitant's current gross monthly annuity rate that would occur if he elected the maximum survivor annuity benefit. *See* AF, Tab 5. OPM also sent him Form RI 20-63, Post-Retirement Application to Elect a Reduced Civil Service Annuity with Survivor Benefit for a Current Spouse (application). *See* AF, Tabs 5 and 8. The annuitant died on December 4, 1993. *See* AF, Tab 5. There is no evidence in the record to show that he sent the application to OPM before he died.

OPM correctly denied the appellant's application for survivor annuity benefits.

Under the applicable statue, in order for the appellant to receive a survivor annuity as a result of death of her husband, he must have irrevocably elected such an annuity, in a signed writing received in the OPM within two years of their marriage. See 5 U.S.C. § 8339(k)(2)(A). The writing need not have taken any particular form, so long as it clearly indicated that this was his intention. *See Lemp v. Office of Personnel Management*, 26 M.S.P.R. 549,552 (1985). Thus, the dispositive issue in this appeal is whether the February 19, 1990, writing clearly indicated that it was the annuitant's intention to elect a survivor benefit for the appellant. I find that it did not. It is simply not clear from the writing that this is what he intended. Although the writing is susceptible to this interpretation, I find it is ambiguous, and open to other interpretations. For example, it is also open to the interpretation that the annuitant was considering whether to elect a survivor annuity for the appellant, with his ultimate decision dependent on the additional information which OPM was expected to send him. Thus, I find that the writing did not evidence a clear intention by the annuitant to elect to provide

the appellant with a survivor annuity. *Cf. Bottrell v. Office of Personnel Management*, 36 M.S.P.R. 338,342 (1988) (where language in divorce decree could be read to provide either a survivor annuity or a lump-sum benefit and was thus ambiguous, the was no entitlement to a survivor annuity), *aff'd*, 867 F.2d 1421 (Fed.Cir. 1989).

I, therefore, find the instant case distinguishable from *Lemp*. In *Lemp*, the Board found that although the appellant's husband did not specifically state that he was electing survivor benefits, his letter to OPM clearly indicated that this was his intention. *See Lemp*, 26 M.S.P.R. at 552. Further, the Board found that, considering his indication, his failure to receive and return the OPM form electing such benefits did not detrimentally affect the appellant. *Id.* Here, I find that the February 19, 1990, writing did not clearly indicate an intention to elect survivor benefits. I, therefore, find it significant that the annuitant failed to return the Form RI 20-63 which OPM sent to him after receiving his writing. The appellant contends that this may have due to illness, but the record does not show that her husband was so incapacitated due to illness that he was unable to return the form to OPM at any time between April 16, 1990, and January 6, 1991, when the time period for making the election expired.

The appellant points to OPM's reconsideration decision as evidence that OPM itself viewed the decedent's February 19, 1990, writing as a request for survivor annuity benefits. *See* AF, Tab 10. I have considered this argument in reaching my decision, but I do not find that because OPM so characterized the writing, that this can be determinative of the decision I must make concerning whether the writing evidenced a clear intention to provide the appellant with a survivor annuity. For the reasons set forth, I find that it did not. Accordingly, while I sympathize with the appellant, I find that she has not met her burden of proving be preponderant evidence her entitlement to survivor annuity benefits under CSRS.

DECISION

The agency's reconsideration decision is AFFIRMED.

FOR THE BOARD: Joseph A Hallock
Administartive Judge

NOTICE TO PARTIES CONCERNING SETTLEMENT

The date that this initial decision becomes final, which is set forth below, is the last day that the administrative judge may vacate the initial decision in order to accept a settlement agreement into record. *See* 5 C.F.R. § 201.112(a)(5).

NOTICE TO APPELLANT

This initial decision will become final on June 29, 1995, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is the last day on which you can file a petition for review with the Board. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition for review must state your objections to the initial decision, supported by reference to applicable laws, regulations, and the record. You must file your petition with:

The Clerk of the Board
Merit Systems Protection Board
1120 Vermont Avenue, N.W., Suite 806
Washington, DC, 20419

If you file a petition for review, the Board will obtain the record in your case from the Administrative Judge and you should not submit anything to the Board that is already part of the record. Your petition must be postmarked or hand-delivered no later than the date this initial decision becomes final. If you fail to provide a statement with your petition that you have either mailed or hand-delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW
Washington, DC, 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 30 calendar days after the date this initial decision becomes final.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

App. II.

Appendix D

United States
Office of Personnel Management
Retirement Operations Center
Boyers, PA, 16017

1. Date	2. Claim Number
4-29-94	CSF 2 141 260
3. Case name John J. Sobocinski	
4. Deceased *(if different from 3)*	
5. Retirement System Civil Service	
6. Entitled person(s) and relationship	

Zofia Sobocinski
920 Pennsylvania Ave
Schenectady, NY 12303

Based on documents we have on file as of the date in block 1, we have determined in this initial decision that you are not eligible for survivor or death benefits as a result of the death of the individual naled in blocks 3 or 4 above. Please refer to the reason checked below:

* John J. Sobocinski did not elect a survivor annuity for you in this case. No survivor annuity is payable. If you do not agree with this decision please follow the reconsideration rights which are on the reverse.

---

* This is a handwritten note without signature

Appendix E.

DESIGNATION OF BENEFICIARY
CIVIL SERVICE RETIREMENT SYSTEM

A. INFORMATION CONCERNING THE DESIGNATOR

1. Name (Last, First, middle)
JOHN J. SOBOCINSKI

2. Date of Birth (Month, day, year)
9/11/10

3. Social Security Number
108-10-7933

4. Claim number if known
CSA- 176387 L

4a. Department or agency in which presently or last employed, including bureau or division
POST OFFICE "MAILCODE DIVISION"

5. I, the employee or former employee identified above, consulting any and all previous designations of beneficiaries named below in making any lump-sum benefits which may become payable under the Civil Service Retirement Law, hereby designate the beneficiary or beneficiaries named below to receive any lump-sum benefits which may become payable under the Civil Service Retirement Law upon my death. I understand that this designation of beneficiary will not affect the rights of any survivors who may qualify for annuity benefits other than any death benefit payable by me in writing.

B. INFORMATION CONCERNING THE BENEFICIARY OR BENEFICIARIES

6. Type or print full name, middle initial, and last name of each beneficiary	Relationship	Share to be paid to each beneficiary (See example)
ZOFIA H. SOBOCINSKI	WIFE	100 %
CANCEL ALL OTHERS DESIGNATIONS BEFORE THIS DATE		

7. I hereby direct, unless otherwise indicated above, that if more than one person is named, the share of any deceased beneficiary or beneficiaries who may die before a lump-sum benefit becomes payable shall be distributed equally among the surviving beneficiaries, or entirely to the survivor. If none of the beneficiaries die alive when the lump-sum benefit becomes payable, this designation shall be void.

Date of this designation (Month, day, year)
2/31/90

Signature of employee (Do not print)
John J. Sobocinski

8. WITNESSES (A witness is ineligible to receive payment as a beneficiary)

We, the undersigned, certify that this instrument was signed in our presence.

Signature of witness (Do not print)
Kathryn Rumlauglo

Number and street
920 Pennsylvania Av

City, State, Zip code
Schenectady, NY 12303

Signature of witness (Do not print)
Kathryn Rumlauglo

Number and street
4 Mansfield Ct

City, State, Zip code
Schenectady, NY 12309

IRS FEB

Appendix F.

Seal

United States
Office of
Personnel Management

Washington, DC, 20415
2/12/90

In Reply Refer To

Your Reference
CSA 176 3872

John J. Sobocinski
920 Pennsylvania Av
Schenectady, NY, 12303

Dear Mr. Sobocinski

It has been noted that you have married since the date of your Civil Service Retirement.

In order to update our records, please provide our office with a copy of your marriage certificate. Since you may also be entitled to elect a reduced annuity with survivor benefits to your spouse, you should indicate whether or not you wish to make such an election. We will the review your file and advise you of any change or elections that you are entitled to make.

Please be sure the date of marriage is clearly posted on the document you furnish to our office. It is also important that you post your full name, date of birth and CSA claim number to enable our office to readily identify your claim.

Sincerely,

Kathy Rumlauglo
Claims Examiner
Claims Correspondence Section

Appendix G.

Feb.19.1990

Attn. Office of Personnel Management
Wash. DC. 20415

Dear Ms. Kathy Rumlauglo;
The following is the information you requested in your letter of Feb-12-1990;

John Joseph Sobocinski
Date of Birth; Sept-11-1910
CSA-Number-A 1763872
Marriage Certificate, and possibly a change in my annuity survivor benefits for my wife.

Thank You
Sincerely,
John J. Sobocinski

John J. Sobocinski
920 Pennsylvania Ave
Schenectady, NY, 12303

Appendix H.

Seal United States

Office of

Personnel Management Washington, DC. 20415-0001

CRR:WDU CSA 176 3872
Nov 15 1994 John J. Sobocinski

Zofia Sobocinski
920 Pennsylvania Ave.
Schenectady, NY 12303

Dear Mrs. Sobocinski:

This is in reply to your May 16, 1994 request for reconsideration of the initial decision that you are not eligible for survivor annuity benefits based on the Federal service of your late spouse, John J. Sobocinski. For the reason(s) noted below, we affirm the initial decision.

BACKGROUND

The record shows that your late husband retired under the Civil Service Retirement Law on January 1, 1975. At that time he was unmarried and did not elect a survivor annuity benefit. You and your husband were married on January 6, 1989, and for two years thereafter he was eligible to elect a reduction in his annuity in order to provide survivor benefits for you. On February 19, 1990, your spouse wrote a letter to OPM requesting survivor annuity benefits for you. On April 16, 1990, we sent him a letter which informed him of his annuity rate reduced to provide the maximum survivor annuity as well as the amount of the deposit due plus interest. An election form was attached for him to complete. We do not have a record of your late husband responding to this election letter. The time period in which he could have filed for a survivor reduction in his annuity ended on January 6, 1991. Mr. Sobocinski died December 4, 1993, and you applied for a survivor annuity. It was determined that you were not entitled to survivor benefits.

ANALYSIS AND FINDINGS

The Office of Personnel Management (OPM) is charged with the administration of the Civil Service Retirement law and is expected to pay benefits only as provided by law. Also, we are obligated under law and regulation to correct any error(s) in Payment of benefits. The law that applies to your case where retirement was after May 6, 1985 or marriage was after February 26, 1986, is:

Section 8339(k)(2) of title 5, United States Code, which reads:

> An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee or Member's spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if the was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section.

Section 831.631(3)(I) of title 5, Code of Federal Regulations, provides:

> (3)(I) Except as provided in paragraph (b)(3)(ii) or (b)(4) of this section, a retiree making an election under this section must deposit an amount equal to the difference between the amount actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraphs (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, compounded under Section 831.105, from the date when each difference occurred.

On April 16, 1990, we sent Mr. Sobocinski an election letter and an application for survivor annuity benefits. This letter informed him of the amount of deposit plus interest due, and his annuity rates with and without a reduction for a survivor annuity benefit.

We have carefully reviewed our records and we do not find that your late spouse returned the application. Therefore, you are not eligible for survivor annuity benefits. Whole we sympathize with the circumstances you have presented, the law is specific on this point and OPM has no authority to change governing statues. You were eligible to receive a lump-sum payment of the accured annuity due for the days that your late spouse lived in the month of his death. This benefit was paid to you on March 24, 1994.

APPEAL RIGHTS

In view of the above, the decision of April 29, 1994 is affirmed. This constitutes the final decision of OPM on this matter. You have the right to appeal this decision to the Merit Systems Protection Board. The enclosed sheet provides filing instructions. Please note that you have 35 days from the date of this letter to file your appeal.

Sincerely,

Wanda D. Underwood
Benefits Specialist
Reconsideration and Appeals Division

Enclosure

WUnderwood
November 15,1994
G:\COMMON\ORIP\RD\UNDERWOO\SOBCNSKI.LTR
YELLOW

Appendix I.

CARL ENGLEBARDT,MD.
1201 NOTT STREET, SUITE 303
SCHENECTADY,NY,12308

JOHN SOBOCINSKI
6/26/90
INITIAL OV

COMPLAINTS: Mr. Sobocinski is a 79-year-old man referred by Dr.McEvoy regarding a sacral pressure ulcer. He has had this for about a year. It is quite deep and quite foul at this time. He has a history of radiation treatments in 1980 for carcinoma of the prostate. This is apparently the first time that he has had any significant breakdown.

PMH: He is incontinent of urine since his prostate surgery in 1980. He denies any other significant medical problems but he does take Aldactone, Lasix and potassium. He takes Voltaren and then he has various creams for rashes. He was recently put on Ceclor by Dr. McEvoy. His medical doctor is Dr.Yee and his oncologist is Dr. Jaski and he says that he did see Dr. Bentrovato, but he has had a disagreement with Dr. Bentrovato, and apparently has not been followed by a urologist in a while.

PE: On examination he has an extensive foul sacral pressure ulcer with tremendous amount of undermining here and this is right down and no doubt involves the sacro-coccygeal region. I did a limited debrimenet here in the office to de-bulk some of his necronic tissue. He will need to be hospitalized and we will bring him to the operating room initially for an axcision and partial sacrectomy. We will then dress the wound for several days and allow this to clean

1/4/91 Rx called in to Fay's-Watt St. Silvadene cream 400gr, apply twice a day, 3 refills.

4/4/91
OV: John came in today because he was wondering whether there is any problem with the flap. He says his legs have been swelling terribly.

On examination he remains beautifully healed in the buttocks and sacral area. His legs are very tensely swollen. He says he has been on Lasix and Aldactone before and that this was not helpful to him. The only thing I can suggest is that we may want to try a Jobst pump. I do not think it is going to resolve the problem that he has which I think is going to be persistent. I will write a prescription for a Jobst pump which he could probably rent from White's, and use for a trial period. cc/Dr. Busino

10/14/92
OV: John is here now concerning a left heel ulcer. It is hard to get a history.

PE: On examination he has what looks like an ulcer which has healed now just about. It is very superficial at this time. He does have this lymphedema from his radiation therapy which is a problem. I have asked that his wife apply Silvadene cream and a gauze dressing twice a day, and I have impressed upon them that the ulcer can not touch the bed. It can not rest on the bed at all, and they are going to keep all pressure off. They will call me in a month and let me know how he is doing.
cc/ Dr. Busino

11/2/92
Phone call: Wife called. Heel is the same, no change. Dr. E advised they continue treatment, call in two weeks. ms

10/12/90
SURGERY AT ST.CLARE'S HOSPITAL

Under general anesthesia the bilateral buttock rotation flaps were elevated and debrided and bilateral superior gluteus muscle turnover flaps were then raised and used to cover the exposed sacrum. Split thickness skin grafts were harvested from the right posterior thigh and were used to cover the muscle that was exposed. He tolerated the procedure well. He left the operating room in a circle electric bed.

11/20/90
Phone call: VNA called. Patient has R heel area which is red with white center, painful tender. Patient has been taking heel booties off at night. VNA applied Tagaderm, lotion, and foam bootie. Ordered Tylenol #3 #40.

11/23/90 The flap is excellent. There is an open area where the drain exited on the left hip area which has some pocketing and I am going to have the visiting nurse pack this. Otherwise he is doing great.

12/25/90
St. Clare's ER VNA called today and said Mr.Sobocinski had 104 temp and had shaking chills. VNA did not see any obvious changes in his flaps or grafts or she thought his urine looked cloudier. I suggested that he be brought to the emergency room for evaluation. I saw him in St.Clare's ER. The flaps and grafts are all healing very nicely and I do not see this as the source of his problem at all. Most likely this is going to be pulmonary or urinary tract, and Dr.Peterson is evaluating this in the emergency room and will contact Dr. Gold or Dr. Snitkoff depending on what she finds. I will continue to see Mr. Sobocinski at home as necessary.

8/30/90

HV: I am going to bring Mr. Sobocinski to the operating room tomorrow and excise the necrotic area of the right gluteal flap. We will try to close this advancement and closure but it is possible we may need to do a skin graft here. I discussed all this with him and he understands and is ready to proceed.

8/31/90

SURGERY AT ST.CLARE'S HOSPITAL

Under general anesthesia the necrotic portion of the left gluteal rotation flap was excised and a split thickness skin graft was applied to the defect. The graft was taken from the right posterior thigh. There were no complications. I could have closed the defect directly but because of the problem with circulation in this tissue I felt that we could absolutely no tension. For this reason the skin graft was used to close it.

10/2/90

HV: There is good skin and soft tissue coverage now and plenty of it but flaps are not sticking down. We are going to attempt one more time to close this by elevating the gluteal flaps and doing turn-over gluteus maximus muscle flaps to fill in over the sacrum here. This is really the last reasonable option for getting this radiation ulcer with radio-necrosis closed. I gave him the option of going home for a while or proceeding now because I know he is getting tired of being in the hospital. He has thought this over, and has decided that he would like to try one more time. I discussed the procedures and the possible complications and the post-operative management with him in detail. He understands everything and is ready to proceed.

and the final debridement can be done at the time of the operating procedure. The wound was debrided and cultures were taken and the wound was packed with gauze. He tolerated the procedure well and left the operating room in good condition.

8/8/90

HV: We are preparing him for another attempt at closure on Monday. I have arranged for a circle electric bed. We are starting bowel prep and he will have a Foley catheter in. We are going to do bilateral gluteus muscle flaps with bilateral buttock rotation flaps on top of this. This is a massive radiation ulcer with probable chronic sacral and coccygeal osteomyelitis.

8/15/90

SURGERY AT ST.CLARE'S HOSPITAL

Under general anesthesia debridement of a massive radiation ulcer to this sacro-gluteal region was performed and all clinically involved radiation damage tissue was excised. To close this massive ulcer, bilateral gluteal rotation flaps were elevated and rotated. Because of his tissues we were able to close the donor area directly. We did leave a triangular area open on the right side and a small area open on the left side also. There is no tension on this tissue and this should heal in spontaneously very nicely. The patient was placed directly on his stomach on a circle electric bed. He tolerated the procedure well and left the operating room in good condition.

up and then we will close this with myocutaneous flap closure, most likely bilateral gluteus muscle sliding myocutaneous flaps. This could be a very difficult problem because of the radiation damage.
I discussed all this with Mr. Sobocinski and he understands all desires to proceed. We will make the arrangements for him.
Cc/ Dr. Yee
Dr. Jaski
Dr. McEvoy

7/16/90
SURGERY AT ST. CLARES'S

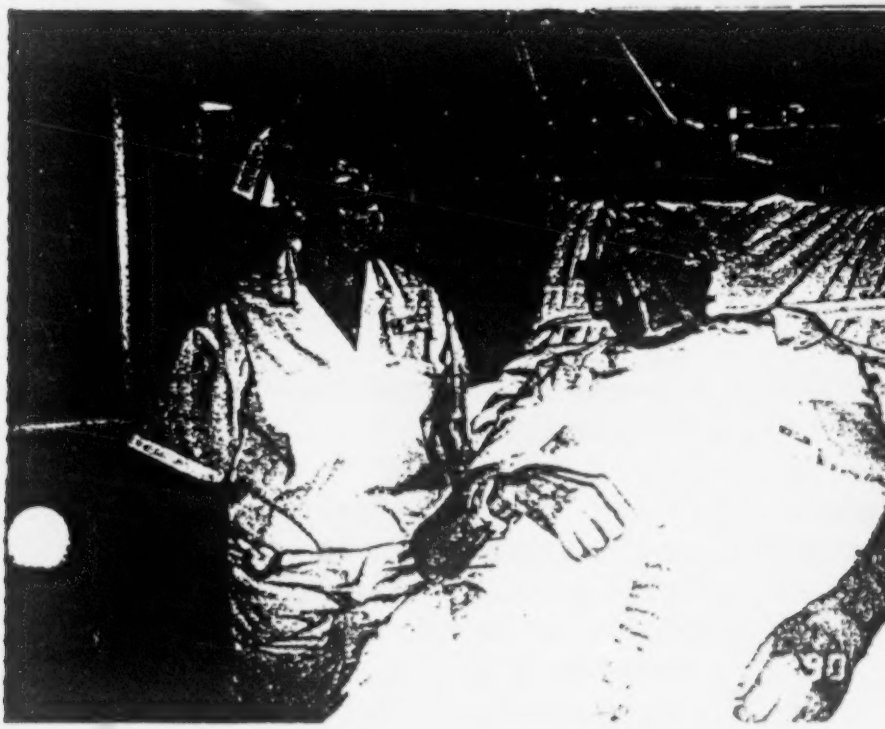
Under general anesthesia a wide excision of the foul and necrotic ulcer was performed along with a partial sacral coccygectomy. There was purulence involving the bone here and using a rongeur there was essentially a posterior decortication done into good bleeding bone. The cavity was packed with moist saline dressings and he was sent to the recovery room in good condition. He is scheduled for a flap repair to be done in the near future.

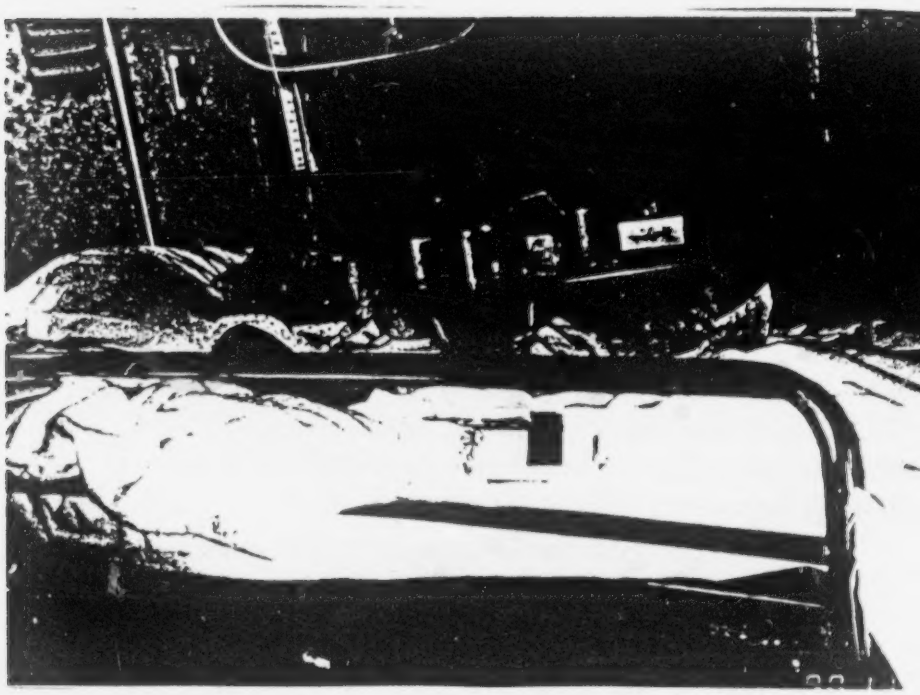
7/18/90
SURGERY AT ST.CLARE'S HOSPITAL

Under general anesthesia excision of the large sacral ulcer was performed and the area was repaired using bilateral sliding gluteus maximus myocutaneous flaps. He tolerated the procedure well.

8/6/90
SURGERY AT ST.CLARE'S HOSPITAL

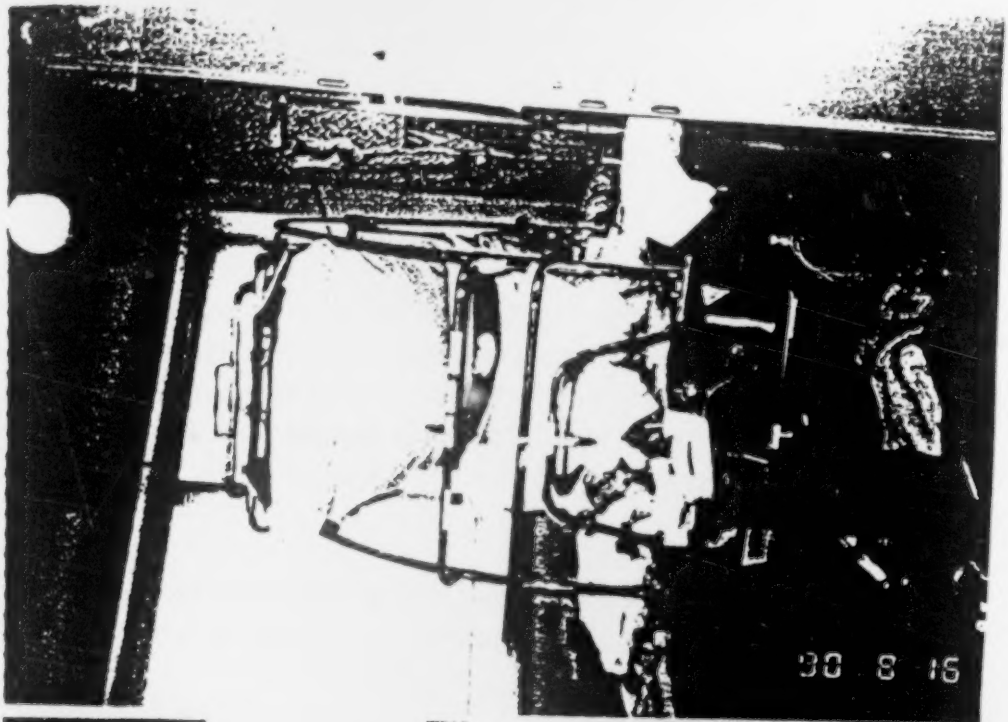
The patient was brought to the operating room and was given IV sedation and a debridement was performed. The remaining sutures were removed and the wound was opened widely for debridement and packing. It is reasonably clean

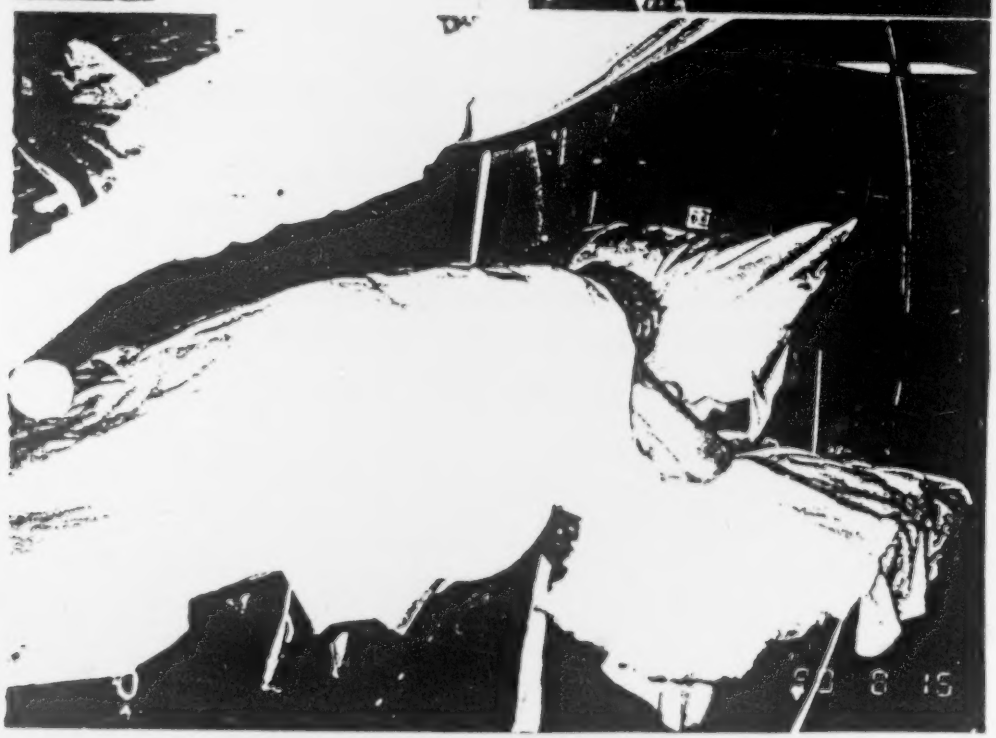









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Appendix J.

From M.S.P.R. 549 (1985) cases:

page 550.

2.Merit Protection ⇐ 321

Failure of retiree to comment on fact that his annuity was not reduced to provide for survivor benefits did not, standing on its own, show that retiree did not intend to elect survivor benefits when he sent letter to Office of Personnel management informing them that he had remarried. 5 U.S.C.A. § 8339(j).

3.Merit Protection ⇐ 321

Statue providing for election of a survivor annuity does not require annuitants to use any particular form for such election. 5 U.S.C.A. § 8339(j).

4.Merit Protection ⇐ 321

Letter from retiree informing Office of Personnel Management that he had remarried constituted a signed writing sufficient to be deemed an election of survivor benefits, since although retiree did not specifically state that he was electing survivor benefits, letter clearly indicated that such was his intention; moreover, considering such indication, retiree's failure to receive and return proper election form could not detrimentally affect his widow. 5 U.S.C.A. § 8339(j).